

Message Text

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FOR EB/IFD/BP - HARVEY WINTER

E.O. 11652: N/A
TAGS: WIPO
SUBJ: BUDAPEST DIPLOMATIC CONFERENCE ON MICROORGANISMS
TREATY

REF: WILLIAMSON/WINTER TELECON

FOLLOWING IS TEXT OF LETTER SENT MARCH 31 BY DG BOGSCH
TO EDWARD ARMITAGE OF UK PATENT OFFICE:

QUOTE:

...THANK YOU FOR YOUR LETTER OF MARCH 25 TRANSMITTING
PAPERS REFLECTING POSSIBLE AMENDMENTS TO THE MICRO-
ORGANISMS TREATY.

THEIR NUMBER AND IMPORTANCE FRIGHTEN ME A LITTLE. THE
APRIL 1976 SESSION OF THE COMMITTEE OF EXPERTS EXPRESSED
THE OPINION THAT IN VIEW OF THE LIMITED NUMBER OF
PROBLEMS STILL REQUIRING CONSIDERATION, A DIPLOMATIC
CONFERENCE COULD BE CONVENED WITHOUT THE NEED FOR A
FURTHER SESSION OF THAT COMMITTEE (DMO/IV/10, PARA 112).
HAD I KNOWN THAT THERE WERE SEVERAL IMPORTANT PROBLEMS
REMAINING, AT LEAST FOR THE UNITED KINGDOM, I WOULD HAVE
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CERTAINLY CONVENED THE COMMITTEE FOR ANOTHER MEETING
BECAUSE, NATURALLY, SIGNATURE BY THE UNITED KINGDOM,
WHICH INITIATED THE WHOLE IDEA, IS ESSENTIAL.

WE DID NOT HAVE TIME YET TO CONSIDER IN DETAIL YOUR
CONTEMPLATED AMENDMENTS. NEVERTHELESS, I SHOULD LIKE
TO DRAW YOUR ATTENTION TO AT LEAST THE FOLLOWING:

(A) I SEE REAL DIFFICULTIES WITH ANY INTERNATIONAL ORGANIZATION DESIGNATING DEPOSITARY AUTHORITIES SINCE THE RESPONSIBILITY OF THE ONLY ENTITIES WHICH CAN EXERCISE SUPERVISION (BY LEGISLATION OR OTHERWISE)--NAMESLY, THE STATES--WOULD THEREBY DISAPPEAR IN SUCH CASES. I DO NOT THINK THAT A SHIFT TO "ASSURANCE" INSTEAD OF "GUARANTEE" WOULD MAKE MUCH DIFFERENCE IN THIS RESPECT SINCE ASSURANCES BY A GOVERNMENT ARE USUALLY TAKEN VERY SERIOUSLY.

(B) THE POSSIBILITY OF A "NEW" DEPOSIT SEEMED TO BE OF EXTREME IMPORTANCE DURING THE PREPARATORY DISCUSSIONS AND WAS THE SUBJECT OF VERY LONG DISCUSSIONS AND DIFFICULT COMPROMISES. YOUR PROPOSAL WOULD LEAVE NO ASSURANCES BY THE TREATY THAT ANY NEW DEPOSIT WOULD BE RECOGNIZED.

(C) YOU CONTEMPLATE PROPOSING THAT IF ANY AUTHORITY DISCONTINUES THE PERFORMANCE OF ITS OBLIGATIONS, IT SHOULD BE THAT AUTHORITY RATHER THAN THE SPONSORING STATE WHICH WILL SEE TO IT THAT THE SAMPLES BE TRANSFERRED TO ANOTHER AUTHORITY. I WONDER WHETHER, WITH SUCH A PROPOSITION, THE DEPOSITORS WOULD HAVE MUCH CONFIDENCE IN THE SYSTEM SINCE, FOR EXAMPLE, IN THE CASE OF THE DISAPPEARANCE OF A DEPOSITARY AUTHORITY, IT IS UNLIKELY THAT SUCH AUTHORITY WOULD GO TO THE TROUBLE OF TRANSFERRING THE MICROORGANISMS DEPOSITED WITH IT. ANY CONTRACTUAL UNDERTAKING TO THIS EFFECT COULD BE EX-

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VERY DIFFICULT TO ENFORCE OR COULD, IN CERTAIN CASES, NOT BE ENFORCED AT ALL.

(D) NEEDLESS TO SAY, RULE 11(3) IS THE RESULT OF LONG NEGOTIATIONS AND DOUBTLESS THE MOST DIFFICULT ONES. I SEE AT LEAST TWO DIFFICULTIES WITH YOUR PROPOSAL: ONE IS THAT IN SOME COUNTRIES, FOR EXAMPLE, IN THE UNITED STATES, PATENT APPLICATIONS ARE NOT PUBLISHED; THE SECOND IS THAT IN THE SYSTEM AS PROPOSED BY YOU, THERE WOULD BE NECESSARILY A DELAY BETWEEN THE PUBLICATION OF THE PATENT APPLICATION OR THE PATENT ON THE ONE HAND AND ACCESSIBILITY TO THE SAMPLE ON THE OTHER.

(E) I ALSO SEE DIFFICULTIES WITH MAINTENANCE FEES. THIS, TOO, WAS AMPLY DISCUSSED IN THE PREPARATORY MEETINGS. ONE OF THE MAIN PREOCCUPATIONS IS THAT THE APPLICANT SHOULD NOT BE ABLE TO WITHDRAW HIS DEPOSIT, FOR REASONS THAT ARE OBVIOUS. IF WE ACCEPT THE IDEA OF A MAINTENANCE FEE AND A DEPOSITOR DOES NOT PAY IT, WHAT

WILL BE THE LEGAL CONSEQUENCE? CAN THE DEPOSITARY
AUTHORITY DESTROY THE MICROORGANISM? IF IT CAN, WE GIVE
INDIRECTLY THE POSSIBILITY TO THE APPLICANT TO WITHDRAW.
IF IT CANNOT, WHAT WILL BE THE SANCTION FOR NOT PAYING
THE MAINTENANCE FEE?...

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